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**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

[REDACTED]

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 02, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on February 25, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the Division of Hearings and Appeals has jurisdiction to address the merits of Petitioner's request for Medicaid benefits.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703  
By: DDB by file

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County.

- [REDACTED]
2. On May 2, 2013, the Petitioner filed for Social Security Disability Benefits (SSDI), stating that he became disabled due to a left leg amputation, diabetes, high blood pressure and heart failure. (DDB file)
  3. On July 30, 2013, the Petitioner filed for disability-based Medicaid benefits, stating that he became disabled due to an above ankle amputation and an infection. (DDB file)
  4. On November 18, 2013, the Disability Determination Bureau denied Petitioner's application for Medicaid. (DDB file)
  5. The Social Security Administration (SSA) also denied Petitioner's application for SSDI and on or about December 26, 2013, the Petitioner filed for reconsideration of the SSA decision. (Exhibit 1; section: Disability Report Appeal)
  6. Petitioner filed a request for reconsideration of the DDB decision on January 2, 2013. (DDB file)
  7. On January 24, 2013, the DDB denied Petitioner's application for Medicaid. (DDB file)
  8. On or about that same date the Social Security Administration denied Petitioner's application for SSDI. (Testimony of Petitioner; DDB file Report)
  9. Petitioner has since requested a hearing before an administrative law judge from the Social Security Administration. (Testimony of Petitioner)
  10. January 28, 2014, the DDB forwarded the file to the Division of Hearings and Appeals for Review. (DDB file)

### **DISCUSSION**

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. State v. Hanson, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). In a case involving an application for assistance, the applicant has the initial burden to establish he or she met the application requirements.

A person between ages 18 and 65, with no minor children, must be blind or disabled to be eligible for MA. A finding of disability must be in accordance with Federal Social Security/SSI standards. *See Wis. Stats. §49.47(4)(a)4*. Because the standards are the same, a finding of no disability for Social Security/SSI purposes made within 12 months of the Medicaid application is binding on a State Medicaid agency. Exceptions may occur only if certain conditions exist. Specifically, the Division of Hearings and Appeals has no authority to find a Petitioner disabled unless he or she:

- (i) Allege[s] a disabling condition different from, or in addition to, that considered by SSA in making its determination; or
- (ii) [The MA application is more than 12 months after the most recent SSA determination]; or
- (iii) Alleges less than twelve months after the most recent SSA determination denying disability that his or his condition has changed or deteriorated since that SSA determination,

alleges a new period of disability which meets the original  
durational requirements of the Act, and

- (A) Has applied to SSA for reconsideration or reopening of its disability decision and SSA refused to consider the new allegations.

*42 CFR 435.541(c)(4)(emphasis added).*

Here, Petitioner applied for both SSDI and Medicaid, alleging the same disabling conditions. The SSA denied Petitioner's request for benefits within 12 months of his application for Medicaid.

Petitioner asserts that his condition has changed since he was denied Social Security Disability Benefits on January 24, 2014. However, the medical documentation that he submitted does not clearly indicate a change in Petitioner's condition since the SSA rendered its decision. Regrettably, the documents all appear to predate the January 2014 SSA decision. In addition, the Petitioner still has an appeal pending with the SSA and is waiting for a hearing date. Consequently, the SSA's decision is binding and the Division of Hearings and Appeals does not have the authority to address the merits of Petitioner's application for disability-based Medicaid benefits.

Petitioner should note that he can apply for insurance coverage under the new Badger Care program for childless adults with income below 100% of the Federal Poverty Level. Petitioner can apply on-line at [access.wisconsin.gov](http://access.wisconsin.gov). If he has difficulty with the website, the Petitioner can call 1-800-362-3002.

### **CONCLUSIONS OF LAW**

That the Division of Hearings and Appeals does not have the authority to address the merits of Petitioner's application for disability-based Medicaid benefits when there is a Social Security Administration denial of disability within 12 months of the Medicaid application.

**THEREFORE, it is**

**ORDERED**

That the Petition is dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

## **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

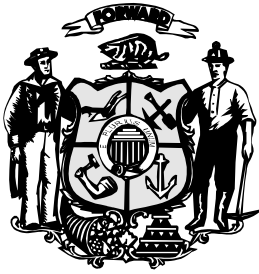
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of  
Milwaukee, Wisconsin, this 17th day of  
March, 2014.

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\sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



## State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 17, 2014.

Milwaukee Enrollment Services  
Disability Determination Bureau